

121 FERC 61,027  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Florida Power Corporation

Docket Nos. ER07-809-000  
ER07-809-001  
ER07-809-002

ORDER CONDITIONALLY ACCEPTING INTERCONNECTION AGREEMENT,  
ORDERING REFUNDS AND DENYING WAIVER REQUEST

(Issued October 12, 2007)

1. On April 27, 2007, Florida Power Corporation d/b/a Progress Energy Florida Inc. (Progress Energy) filed two agreements with Seminole Electric Cooperative, Inc. (Seminole) concerning the reconfiguration of Progress Energy's Vandolah substation to accommodate a new interconnection requested by Seminole. As discussed below, this order accepts Progress Energy's filing, effective as of June 27, 2007, denies waiver of the Commission's 60-day prior notice requirement, and orders refunds.

**I. Background**

2. On April 27, 2007, Progress Energy submitted two agreements between Progress Energy and Seminole, one executed on March 20, 2006 (March Agreement)<sup>1</sup> and an unexecuted agreement that went into effect on December 1, 2006 (December Agreement)<sup>2</sup> (collectively, the 2007 Generation IAs).<sup>3</sup> As discussed below, the 2007

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<sup>1</sup> Florida Power Corporation, First Amendment to 1990 Agreement (March Agreement).

<sup>2</sup> Florida Power Corporation, First Revised Rate Schedule FERC No. 129 (December Agreement).

<sup>3</sup> As the Commission noted in *Florida Power Corporation*, 58 FERC ¶ 61,161, *reh'g denied*, 60 FERC ¶ 61,003 (1992), it generally has been Florida Power Corporation's (Florida Power) practice to execute two agreements when it interconnects with a third party: an interconnection agreement and a separate interchange agreement.

(continued)

Generation IAs provide for Progress Energy to undertake certain upgrades at the Vandolah Substation and for Seminole to reimburse Progress Energy for the costs of such upgrades. Progress Energy characterizes the March Agreement as an amendment to an earlier transmission interconnection agreement (1990 Transmission IA), discussed below.

**A. The 1990 Transmission IA**

3. On August 1, 1990, Progress Energy and Seminole entered into the 1990 Transmission IA to allow Seminole to obtain capacity and energy from the Hardee power station (Hardee), which is owned by a third entity, and deliver the power to its members beyond the Vandolah substation. The 1990 Transmission IA provides for Seminole to construct two 2,000 amp 230 kV transmission circuits from the Hardee plant to the Vandolah substation.<sup>4</sup> It further provides that Progress Energy would modify the Vandolah substation, including installing a 230 kV terminal, two 230 kV circuit breakers and associated bus, tie line and metering equipment and other necessary facilities to accommodate Seminole's interconnection request.<sup>5</sup> In return, Seminole agreed to compensate Progress Energy approximately \$1 million for expenses Progress Energy incurred in modifying the Vandolah substation.<sup>6</sup> Section 2.7 of the 1990 Transmission IA also provides that should the capacity of the Hardee Power Station site be expanded to greater than 660 MW and if Progress Energy were required to construct new facilities to accommodate the expansion, Seminole would be directly assigned the cost of the new

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Florida Power's interchange agreements set out the rates and the terms and conditions of coordination and transmission services. Florida Power's interconnection agreements govern scheduling requirements, metering procedures, and the terms, conditions and obligations of each party to install equipment and/or to provide rights-of-way with respect to the interconnection point in question. Although, in this case, Progress Energy's filings do not distinguish between the March Agreement and the December Agreement as such, for simplicity's sake, we refer to both the March Agreement and the December Agreement submitted by Progress Energy collectively as the 2007 Generation IAs.

<sup>4</sup> Interconnection Agreement Between Florida Power Corporation and Seminole Electric Cooperative, Inc. at Section 2.5 (1990 Transmission IA).

<sup>5</sup> *Id.*

<sup>6</sup> 58 FERC ¶ 61,161 at 61,483.

facilities. The 1990 Transmission IA was accepted for filing in *Florida Power Corporation*.<sup>7</sup>

**B. The 2007 Generation IAs**

4. In 2003, Seminole requested that Progress Energy approve Seminole's five new gas units at Payne Creek Plant (Payne Creek) as a network resource in order to meet Seminole's committed capacity obligation under an agreement between Florida Power Corporation and Seminole.<sup>8</sup> Progress Energy determined that it could approve Seminole's request without any network upgrades to the Progress Energy transmission system.<sup>9</sup> However, in another paragraph of its Amended Application, Progress Energy states that after studying the request, the parties determined that "[t]he upgraded Seminole transmission line and modified interconnection at Vandolah were the most effective and economic option to solve the existing Seminole stability problem that was made worse by the *increased generation capacity* at the Payne Creek Generating Station."<sup>10</sup> On December 1, 2006, Progress Energy states that the five new gas units at Payne Creek came into service.<sup>11</sup>

5. The December Agreement provides for Progress Energy to modify the Vandolah substation to accommodate Seminole's request to interconnect Seminole's added generation at Payne Creek (located next to the Hardee plant site) to the Vandolah substation.<sup>12</sup> In return, Seminole agreed to pay Progress Energy approximately \$4.4

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<sup>7</sup> *Id.*

<sup>8</sup> March Agreement at section 0.2. The additional generation at Payne Creek, which is owned by Seminole, consisted of five 60 MW gas turbine units that came online December 1, 2006. On March 25, 2004, Seminole requested that the 1990 Transmission IA be modified to support the addition of these facilities.

<sup>9</sup> August 2, 2007, Progress Energy Response to Deficiency Letter (Amended Application) at 4.

<sup>10</sup> *Id.* at 2 (emphasis added). We note that the original application was extremely brief and that even the responses to the deficiency letter in the Amended Application were short, obscure and somewhat confusing.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> December Agreement at section 0.8.

million for expenses incurred by Progress Energy to modify the Vandolah substation.<sup>13</sup> The December Agreement also provides that Progress Energy will treat the Vandolah bus as a common point of transmission, with no wheeling charges to Seminole for power transfers through the Vandolah substation bus to the Florida Power and Light Company's Charlotte interconnection.<sup>14</sup>

6. On February 2, 2007, Progress Energy completed the upgrades to the Vandolah substation with a total estimated cost of approximately \$4.4 million.<sup>15</sup> Progress Energy states that the modifications required to accommodate the interconnection include upgrading the existing Seminole Hardee-Vandolah substation transmission line from 2000 amps to 3000 amps, adding or replacing nine circuit breakers and relocating certain transmission circuits in the Vandolah substation. Progress Energy also notes that the upgraded breakers on the Vandolah substation increased the capacity within the Vandolah substation and that this increased capacity could be used by existing and future customers.<sup>16</sup>

7. Progress Energy requests waiver of the Commission's 60-day prior notice requirement to make the 2007 Generation IAs effective on December 1, 2006. It states that the Commission should grant waiver because the filing is not contested and because the 2007 Generation IAs do not affect rates.

## **II. Notices of Filings and Responsive Pleadings**

8. Notice of Progress Energy's original filing was published in the *Federal Register*, with interventions and protests due on or before May 18, 2007.<sup>17</sup>

9. On June 21, 2007, the Commission's Director of Tariffs and Market Development-East issued a deficiency letter to Progress Energy directing it to respond to a series of questions. On June 29, 2007, Progress Energy filed for an extension of time to August 2, 2007 to respond to the Commission's deficiency letter. On August 2, 2007, Progress Energy submitted its response. On August 14, 2007, Progress Energy amended

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<sup>13</sup> March Agreement at section 0.5

<sup>14</sup> December Agreement at section 2.11; March Agreement at section 0.5.

<sup>15</sup> March Agreement at section 0.5; Progress Energy Amended Application at 7.

<sup>16</sup> Progress Energy Amended Application at 7.

<sup>17</sup> 72 Fed. Reg. 26,623 (May 10, 2007).

its August 2, 2007 response. Notices of Progress Energy's responses were published in the *Federal Register* on August 15, 2007<sup>18</sup> and August 22, 2007,<sup>19</sup> respectively. On May 18, 2007, Seminole filed a timely motion to intervene.

### **III. Discussion**

#### **A. Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motion to intervene serves to make Seminole a party to this proceeding.<sup>20</sup>

#### **B. Transmission Interconnection Agreement or Large Generator Interconnection Agreement (LGIA)**

##### **1. Argument**

11. The deficiency letter asked Progress Energy to explain why the 2007 Generation IAs are not being filed as a *pro forma* LGIA,<sup>21</sup> since the 2007 Generation IAs appear to accommodate the increased capacity at Seminole's Payne Creek plant. Progress Energy contends that the Hardee-Vandolah substation interconnection was not for the purpose of interconnecting the Hardee or Payne Creek plants, but to increase the transmission capacity between Seminole and Progress Energy and to give Seminole more flexibility in delivering power from the Hardee and Payne Creek plants to Seminole customers. It also maintains that the Payne Creek plant is interconnected with Seminole, not Progress Energy. It notes that Seminole requested that Progress Energy approve the Payne Creek plant as a network resource, which Progress Energy did, finding that no upgrades would

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<sup>18</sup> 72 Fed. Reg. 45,802 (August 15, 2007).

<sup>19</sup> 72 Fed. Reg. 46,988 (August 22, 2007).

<sup>20</sup> 18 C.F.R. § 385.214 (2007).

<sup>21</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 FR 49,845 at P 34 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 FR 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 FR 265 (January 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 FR 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

be needed to accommodate the request. It contends that Seminole requested the upgrades because they were the most effective and economic way to solve an existing Seminole stability problem made worse by the increased generation capacity at the Payne Creek plant.

## **2. Commission Determination**

12. We find Progress Energy's arguments unpersuasive. As discussed above, the 1990 Transmission IA governs the rates, terms and conditions for the installation and interconnection of the network upgrade facilities necessary to allow Seminole to deliver the power it obtained from the Hardee plant to its members located beyond the Vandolah substation. Accordingly, we agree that the 1990 Transmission IA is a transmission interconnection agreement, as opposed to a generator interconnection agreement.

13. We disagree, however, that the 2007 Generation IAs are also transmission interconnection agreements, for several reasons. First, the 1990 Transmission IA made clear that the interconnection was for the purpose of allowing Seminole to deliver power from the Hardee plant. In contrast, the 2007 Generation IAs explicitly state that the purpose of this interconnection is to accommodate the interconnection of additional generation at Seminole's Payne Creek plant to Progress Energy's Vandolah substation.<sup>22</sup> Also, while Progress Energy makes several assertions that the real intent of the 2007 Generation IAs is to resolve stability problems caused by the Payne Creek plant or to allow more flexibility in delivering power from the Hardee and Payne Creek plants, it has not provided any documentation to support these assertions. Progress Energy has provided no convincing explanation for why we should find the 2007 Generation IAs to be transmission interconnection agreements as opposed to an LGIA subject to Order No. 2003. Moreover, as we explain below, even if these were not generator interconnection agreements, we would not allow the costs of the Vandolah substation upgrades to be directly assigned to Seminole.

14. Accordingly, we direct Progress Energy to revise the 2007 Generation IAs to conform to its *pro forma* LGIA. If the revised agreement conforms to its *pro forma* LGIA, we direct Progress Energy to notify the Commission within 30 days of the issuance of this order that the revised agreement is a conforming LGIA and that it will be included in Progress Energy's electric quarterly report. If the revised agreement is a non-conforming LGIA, Progress Energy must file the agreement and detailed justification and supporting documentation for all non-conforming rates, terms and conditions.

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<sup>22</sup> December Agreement at section 0.8; March Agreement at sections 0.2, 0.4.

**C. Direct Assignment or Rolled-In Pricing**<sup>23</sup>

15. In Order No. 2003, the Commission explained that the network begins at the point where the interconnection customer connects to the transmission system. Any upgrade at or beyond that point is a network upgrade and cannot be directly assigned to the interconnection customer.<sup>24</sup> Accordingly, we reject Progress Energy's proposal to directly assign the costs of the network upgrades at the Vandolah substation to Seminole.<sup>25</sup> Progress Energy must treat the costs of the Vandolah substation upgrades paid by Seminole as an upfront payment to be repaid with interest in the form of transmission credits or some other method agreed to by the parties consistent with Order No. 2003.<sup>26</sup>

**D. Waiver of Prior Notice Requirement**

16. We deny Progress Energy's request for waiver of the Commission's prior notice requirement. In *Central Hudson*, we stated that we will grant waiver of our prior notice requirement if good cause is shown and the agreement is filed prior to the commencement of service.<sup>27</sup> Here, Progress Energy filed on April 27, 2007 an agreement it executed on March 20, 2006, and requests an effective date of December 1, 2006, to coincide with the date on which Seminole began delivering power from its new

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<sup>23</sup> Although incremental pricing is an alternative to rolled-in pricing under the Commission's "higher-of" policy, it differs from direct assignment. *See, e.g., Northeast Texas Electric Cooperative, Inc.*, 108 FERC ¶ 61,084 (2004).

<sup>24</sup> Order No. 2003 at P 65.

<sup>25</sup> Although it appears that all the upgrades here occurred within the Vandolah substation, we note, that the upgraded line from Hardee to the Vandolah substation may be classified as an interconnection facility for which direct assignment is appropriate.

<sup>26</sup> We note that even if this were not a generator interconnection agreement, but an agreement governing transmission service, the result would be the same with regard to cost allocation. *See Id.; Southern Company Services, Inc.*, 116 FERC ¶ 61,247 (2006); *Pacific Gas & Electric*, 108 FERC ¶ 61,297 (2004). Since we conclude that the upgrades to the Vandolah substation are network upgrades, and since Progress Energy admits that they can be used by others, we would require the costs of the upgrades at the Vandolah substation to be rolled into Progress Energy's rates.

<sup>27</sup> *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 at 61,339 (1992).

generating facilities at Payne Creek. Even accepting for sake of argument that waiver should be granted because the Interconnection Agreement does not result in a rate increase for Seminole, we will nevertheless deny waiver because Progress Energy has not demonstrated that the delay in filing this application was for good cause.<sup>28</sup> In *Central Hudson*, we cautioned that while we would generally grant waiver for uncontested filings that do not charge rates, we did not intend to suggest that utilities have an unlimited time to make such filings.<sup>29</sup> Here, the parties executed an agreement governing the modifications as the Vandolah substation on March 20, 2006, and did not file the Interconnection Agreement until a year later, with no valid explanation or justification.

17. Progress Energy is ordered to refund to Seminole the time value of the revenues collected, calculated pursuant to 18 C.F.R. § 35.19a of the Commission's regulations,<sup>30</sup> for the time period during which any revenue was collected without Commission authorization.<sup>31</sup> In its refund report, we note that Progress Energy may explain why the Commission should limit or reduce the time value of any such refunds under *Carolina Power*, *Southern California Edison*, and *Florida Power & Light*.<sup>32</sup>

The Commission orders:

(A) Progress Energy's filing is accepted, effective June 27, 2007, on the

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<sup>28</sup> 18 C.F.R. § 35.11 (2007).

<sup>29</sup> *Central Hudson*, 60 FERC ¶ 61,106 at 61,338 & n.9 (1992). Whether or not an individual customer actually suffered any harm, we add, is irrelevant to our inquiry here. The injury being remedied by refunds for late filing is not merely redress for that customer but also support "the Commission's ability to enforce FPA section 205's requirement that there be prior notice and that the rates charged be just and reasonable at the time they are being charged." *El Paso Electric Company*, 105 FERC ¶ 61,131 at P 21 (2003) (footnote omitted) (*citing Carolina Power*, 87 FERC ¶ 61,083 at 61,356 (1999)).

<sup>30</sup> 18 C.F.R. § 35.19a (2007).

<sup>31</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,980, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

<sup>32</sup> *Carolina Power & Light Co.*, 87 FERC ¶ 61,083 (1999); *Southern California Edison Co.*, 98 FERC ¶ 61,304 at 62,302 (2002); *Florida Power & Light Co.*, 98 FERC ¶ 61,276 at 62,151 (2002).



condition that Progress Energy refiles within 30 days of the date of issuance of this order an Interconnection Agreement consistent with this order.

(B) Progress Energy is hereby ordered to make refunds, with interest, within 30 days of the date of issuance of this order, as discussed in the body of this order. Such refunds shall cover the period during which any rates were collected without Commission authorization. Progress Energy is hereby directed to submit a refund report within 30 days thereafter, regarding the basis for and calculations of the refunds paid.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.